

SERVICE DATE – MARCH 9, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 490X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN KING COUNTY, WASH.

Digest:¹ The Board denies a motion to reopen a Board decision allowing a railroad to end its responsibility to provide freight rail service over 1,100 feet of rail line in King County, Wash.

Decided: March 7, 2016

For the reasons discussed below, we deny a motion to reopen this proceeding filed by the City of Seattle (City).

BACKGROUND

On July 30, 2015, BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 1,100 linear feet of rail line between milepost 4.53 and the end of the line at Engineering Station 258+07 in Seattle, Wash. (the Line). Notice of the exemption was served and published in the Federal Register (80 Fed. Reg. 50,381), and the exemption became effective on September 18, 2015.

On August 20, 2015, the City filed a request for a Notice of Interim Trail Use (NITU).² On September 8, 2015, the City also filed a motion to reopen and a motion for an environmental stay. By letter filed September 9, 2015, BNSF stated that it did not object to the NITU.

By decision served on September 17, 2015, the Board imposed a public use condition; issued a NITU to the City; denied the City's motion for an environmental stay; and stated that it would address the City's motion to reopen in a separate decision.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The City states that, pursuant to a series of pre-existing agreements, BNSF is required to convey this corridor (or at least a width of 30 feet) to the City for railbanking. (City Motion to Reopen 2).

In its motion to reopen, the City argues that the location of milepost 4.53, the beginning point of the abandonment, is unclear based on the maps filed by BNSF. According to the City, BNSF orally informed the City where milepost 4.53 is located but also made contradictory statements regarding which tracks east of milepost 4.53 are being abandoned. Additionally, the City argues that a BNSF representative made statements that a “sidetrack” that is subject to an industry track agreement with a customer was not being abandoned.³ For these reasons, the City argues that a portion of the Line may remain in active rail use and, if so, BNSF’s notice should be considered void ab initio with respect to that portion.

By decision served on December 3, 2015, the Board directed BNSF to file supplemental information to address the issues raised by the City and the ambiguity regarding the description of the Line. Specifically, the Board directed BNSF to clarify the beginning and endpoint of the Line, describe how the sidetrack referred to by the City relates to the Line, if at all, and explain whether there is an industry track agreement relating to the Line pursuant to which BNSF is or has been providing service.

On December 16, 2015, BNSF filed the requested supplemental information. BNSF states that milepost 4.53 is located on the western border of 13th Avenue West and attaches an updated map. (BNSF Supp. 4, Ex. 1.) BNSF also states that what the City refers to as a “sidetrack” is an industry track, which is north of, and runs parallel to, the Line and is depicted on the updated map. BNSF also states that the industry track is owned and largely operated by the customer, Coastal Transportation, Inc. (Coastal), and as such, is not BNSF’s to abandon. (Id.) BNSF explains that service to Coastal will not be affected by the abandonment because BNSF provides service to Coastal from its mainline, west of the Line at issue. (Id.) Thus, BNSF concludes that it properly used the two year out-of-service class exemption for this abandonment. (Id. at 5.)

On January 5, 2016, the City filed comments in response to BNSF’s supplemental information. The City states that it is concerned that there may be some operational trackage east of 13th Avenue that has been used as “storage or tail track.” (City Comment 2.) However, the City also states that it has no objection to the abandonment and railbanking of the Line and asks that the Board treat the notice as a petition for exemption under 49 U.S.C. § 10502 if the class exemption is not available to BNSF. (Id. at 4-5.) The City states that its ultimate concern is that BNSF lawfully abandon and railbank the Line. (Id.)

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1152.25(e)(4), a request to reopen an administratively final action must state in detail the respects in which the challenged decision involves material error, or is affected by new evidence or substantially changed circumstances. Such a request will be granted

³ The City’s motion attached an email that stated that BNSF owns a sidetrack, that there is an industry track agreement with a customer, and that any future trail would need to leave adequate clearance to serve the customer. (City Motion to Reopen, Ex. B.)

only upon a showing that the challenged action would be materially affected by one or more of those criteria. 49 C.F.R. § 1152.25(e)(2)(ii).

We will not reopen this proceeding because the City has failed to satisfy the reopening standards under 49 C.F.R. § 1152.25(e)(4). BNSF has submitted supplemental information and clarified the location of milepost 4.53 and the relationship of the industry track to the Line. BNSF has also confirmed that no operations or service on the industry track involve the Line. While the City has expressed concern regarding possible operations east of 13th Avenue West, it has provided no evidence of operations on the Line that would make the class exemption process inappropriate here.

Based on the record before us, the City has not identified material error in the Board's exemption decision or any new evidence or changed circumstances that would materially affect that decision. We will therefore deny the City's request to reopen this proceeding.

It is ordered:

1. The motion to reopen this proceeding is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.